

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ART FORM
ARCHITECTURE, INC.

Plaintiff,

v.

CFT PROPERTIES, LLC and
CLINTON TEAGUE.

Defendants.

CIVIL ACTION NO:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Art Form Architecture, Inc., files this Complaint against Defendants CFT Properties, LLC and Clinton Teague and for its causes of action alleges the following:

PARTIES

1. Plaintiff Art Form Architecture, Inc., is a New Hampshire for-profit corporation that maintains a principal place of business at 44 Lafayette Road, North Hampton, New Hampshire 03862.

2. Defendant CFT Properties, LLC, is a New Hampshire limited liability company that maintains a principal place of business at P.O. Box 5, North Salem,

New Hampshire. The registered agent for CFT Properties, LLC is Defendant Clinton Teague.

3. Defendant Clinton Teague is a natural person who is believed to reside at 5 Alfred Drive, Salem, New Hampshire 03079. Mr. Teague is also believed to spend some of his time at a home located at 2573 SE 12th Street, Pompano Beach, Florida 33062-7041.

JURISDICTION AND VENUE

4. This Court possesses subject matter jurisdiction under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 *et seq.*

5. Venue is proper in this District under 28 U.S.C. § 1400(a) because Defendants may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District, one of the Defendants is a New Hampshire limited liability company, and Defendants conduct business and/or reside in this District.

6. This Court may also exercise supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367.

FACTS COMMON TO ALL COUNTS

7. Art Form Architecture, Inc. (“Art Form”) is an architectural firm engaged in the business of creating, marketing, publishing and licensing the use of

“architectural works,” as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (“AWCPA”). Art Form owns copyrights protecting the architectural works it has created.

8. Art Form is the owner of a copyright in the “Colby Home Design – Plan #636,” which is a set of architectural drawings for a two-story residential building. The design was created in January 2014 and published on Art Form’s website with a notice of copyright. The design was also registered with the United States Copyright Office and assigned the registration number VA0001935189. The Colby Home Design – Plan #636 will be referred to hereinafter as simply the “Colby.”

9. On or around April 9, 2014, Art Form received a telephone call from a real estate agent asking for information about purchasing the Colby. The agent explained that she was about to sell a building lot located at 4 Floral Street in Windham, New Hampshire, to a builder who intended to build the Colby for a customer. The real estate agent identified Defendant Clinton Teague as the builder, provided Teague’s telephone number, and instructed that Art Form contact him.

10. Art Form called Teague to discuss the sale of a license for Teague to use Art Form’s copyrighted Colby design. Teague responded, however, that he

was not interested in buying the Colby design because he intended to use his own building plans.

11. When Art Form spoke again with the real estate agent, the agent explained that Teague had changed his mind about using the Colby because the building lot was too small to accommodate the design.

12. In or around September 2014, Art Form learned that Defendant Teague and his company, Defendant CFT Properties, LLC, filed a set of building plans with the Town of Windham, New Hampshire, to construct a residential home at 4 Floral Street.

13. Art Form obtained a copy of Defendants' building plans on file with the Town of Windham. The building plans depict exterior elevations and interior floor plans for a two-story residential structure that are virtually identical in all material respects to the structure depicted in the Colby.

14. Art Form traveled to the residential address of 4 Floral Street in Windham, New Hampshire to look at the structure itself. The structure too is virtually identical to the structure depicted in the Colby.

15. Upon information and belief, Defendants prepared and/or caused to be prepared the building plans by copying the Colby. Defendants were able to copy the Colby because they were in possession of the Colby plans, which were available to be viewed on Art Form's website, and which appear to have been

given directly to Defendants Teague and CFT Properties, LLC. Defendants' conduct in copying the Colby plans was willful and without Art Form's consent.

16. Upon information and belief, Defendants not only copied the Colby to prepare a set of building plans, but Defendants Teague and CFT Properties, LLC erected a house at 4 Floral Street in Windham, New Hampshire that is also a willful and unauthorized copy of the Colby.

17. Defendants have violated Art Form's exclusive rights in the Colby (including the right to reproduce, the right to prepare derivative works, and the right to sell) by preparing, publishing, distributing, and selling construction plans and building a house (and possibly multiple houses) that are copies of, or otherwise derived from, the Colby.

CAUSES OF ACTION

COUNT I COPYRIGHT INFRINGEMENT – ALL DEFENDANTS

18. Plaintiff re-alleges and incorporates herein by reference each and every preceding paragraph as if set forth herein.

19. Defendants' construction and sale of a home and creation of associated design and construction drawings based on Art Form's Colby has infringed and continues to infringe Art Form's copyright in the Colby.

20. Defendants' creation and publication of non-pictorial representations based on Art Form's Colby has infringed and is infringing Art Form's copyright in the Colby.

21. Art Form is entitled to recover the actual damages it suffered as a result of the foregoing infringement and all of Defendants' profits from such infringement under 17 U.S.C. § 504(b).

22. In the alternative to the actual damages and infringer profits sought above, Art Form is entitled to an award of statutory damages for all infringements of Art Form's copyright under 17 U.S.C. § 504(c).

23. Under 17 U.S.C. § 505, Defendants are liable for Plaintiff's costs and reasonable attorneys' fees.

24. Art Form is also entitled under 17 U.S.C. § 502 to preliminary and permanent injunctions prohibiting Defendants from further infringing copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures.

25. Art Form is entitled as well to an order under 17 U.S.C. § 503 directing the United States Marshal's Service to impound all infringing copies of the Colby in possession of Defendants or their respective agents or contractors and upon a final hearing of this case destroy or otherwise dispose of those copies.

26. Art Form generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by Defendants.

COUNT II
VIOLATION OF THE NEW HAMPSHIRE
CONSUMER PROTECTION ACT – ALL DEFENDANTS

27. Plaintiff re-alleges and incorporates herein by reference each and every preceding paragraph as if set forth herein.

28. The New Hampshire Consumer Protection Act makes it unlawful to engage in unfair and deceptive acts and practices in trade and commerce. N.H. R.S.A. § 358-A:2.

29. At all times material, Defendants were located in New Hampshire and were engaged in trade and commerce in New Hampshire.

30. Defendant Teague told Art Form that he intended to build a residence in Windham, New Hampshire, using his own building plans and, for this reason, he expressly declined to purchase a license to use the Colby after being offered an opportunity to do so.

31. Teague's statement to Art Form was knowingly false. Instead, Defendants Teague and CFT Properties, LLC intended all along to prepare – or cause to be prepared – building plans for the Windham home by copying the Colby, but without Art Form's permission or knowledge. Among other reasons

Defendants did this is because the home owners who contracted with Defendants did so because they were told the house they were buying was the Colby.

32. By copying the Colby, Defendants have also caused confusion and misunderstanding as to the source, sponsorship, approval, and certification of the goods and services of Art Form.

33. The acts of Defendants were all undertaken in the course of trade and commerce in New Hampshire, were unfair and deceptive acts and constitute knowing and willful violations of the New Hampshire Consumer Protection Act.

34. Art Form has suffered harm as a result of the unfair and deceptive acts of Defendants. Art Form is entitled to an award of damages, either actual or statutory, attorneys' fees, and the doubling or tripling of damages for Defendants' knowing and willful conduct.

JURY DEMAND

35. Art Form respectfully demands trial by jury on all issues so triable.

WHEREFORE, Plaintiff Art Form Architecture, Inc. respectfully requests that this Honorable Court:

- A. Issue a preliminary injunction prohibiting Defendants from further infringement of Plaintiff's copyrights pending a hearing on the merits;
- B. After final hearing, award Plaintiff its actual damages and infringer profits or statutory damages;

- C. Issue a permanent injunction prohibiting Defendants from infringement of Plaintiff's copyrights;
- D. Issue an order under 17 U.S.C. § 503 directing the United States Marshal's Service to impound all infringing copies of Plaintiff's Colby and, after a final hearing, destroy or otherwise dispose of those copies;
- E. Award Plaintiff its costs and reasonable attorneys' fees in this action;
- F. Award Plaintiff damages under the New Hampshire Consumer Protection Act and multiply the damages as permitted by statute; and
- G. Issue such other and further relief the Court deems just and equitable.

Respectfully submitted,

ART FORM ARCHITECTURE, INC.

By its attorneys,

DEVINE MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION

Dated: November 7, 2016

By: /s/ Jonathan M. Shirley

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